

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **JOHN W. MCGETTIGAN, JR., M.D.**

4 Holder of License No. 12606  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona.

Board Case No. MD-04-0666A

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

(Letter of Reprimand & Probation)

7 The Arizona Medical Board ("Board") considered this matter at its public meeting  
8 on June 10, 2005. John W. McGettigan, Jr., M.D., ("Respondent") appeared before the  
9 Board without legal counsel for a formal interview pursuant to the authority vested in the  
10 Board by A.R.S. § 32-1451(H). The Board voted to issue the following findings of fact,  
11 conclusions of law and order after due consideration of the facts and law applicable to  
12 this matter.  
13

14 **FINDINGS OF FACT**

15 1. The Board is the duly constituted authority for the regulation and control of  
16 the practice of allopathic medicine in the State of Arizona.

17 2. Respondent is the holder of License No. 12606 for the practice of allopathic  
18 medicine in the State of Arizona.

19 3. The Board initiated case number MD-04-0666A after receiving a complaint  
20 from a forty-seven year-old male patient ("RSC") that he had been mislead by false  
21 advertising published by Respondent's clinic; that he had been charged for services not  
22 rendered; that he was provided Viagra samples even though he explained it had not been  
23 effective for him; he had been dispensed Viagra without Respondent performing a  
24 complete examination.

25 4. According to RSC he believed after seeing a television advertisement that  
there was no charge to participate in a clinical study being conducted by Respondent and

1 he could get some tests done and he could be examined without charge. RSC then  
2 called Respondent's receptionist who asked him some questions and he thought he was  
3 a candidate on the basis of those questions and they scheduled an appointment for him.  
4 RSC indicates he went to Respondent's office thinking he was going to be in a Cialis  
5 study and that the advertisement said the medical examination, ECG, lab work,  
6 investigational study medications and compensation for travel was included. Also, RSC  
7 was told that, as a Hispanic male, he qualified for the study, but when he saw  
8 Respondent he was told the study was filled and that Respondent was going to be  
9 starting a study on Levitra that RSC could be considered for.

10 5. Respondent testified he started his clinic to treat men with erectile  
11 dysfunction ("ED"). Respondent also brought on a physician assistant who had been  
12 involved in such a clinic. Respondent testified he started to advertise and had men  
13 coming to the clinic at the time when Viagra was just coming on the market. Respondent  
14 was asked to explain the training he had in dealing with ED. Respondent testified he  
15 went to whatever conferences he could that were put on mostly by pharmaceutical  
16 companies, took a number of continuing medical education courses, went and spoke to a  
17 number of urologists and cardiologists who were treating this problem, and went to talks  
18 given by other general practitioners.

19 6. The Board referred Respondent to RSC's medical records, specifically the  
20 history and physical, and was asked if he had anything else dictated or any other  
21 examination or any other history or any other records. Respondent noted he had the  
22 forms RSC filled out himself, which was basically a demographic sheet, a little bit about  
23 his history, medical problems, medications he was on, and consents to treat, etc.  
24 Respondent was asked if his physical examination was totally contained on the history  
25 and physical form or if there was anything else in his physical examination, either dictated

1 or on some other sheet. Respondent testified there was not any additional  
2 documentation of the physical examination. The Board noted that in reviewing the history  
3 there was some past medical history, the usual social history, no review of systems, and  
4 no drug allergies.

5 7. The Board noted Respondent apparently performed a history and physical  
6 and coded it as a 99204. Respondent was asked what standards had to be met before  
7 code 99204 could be charged. Respondent testified he typically spends a half hour to 45  
8 minutes with each gentleman going over the history and he codes based on time spent  
9 with the patient. The Board noted that code 99204 requires a comprehensive history,  
10 comprehensive physical examination, and medical decision making of moderate  
11 complexity.

12 8. Respondent was asked if he could tell the Board about the prostate cancer  
13 surgery RSC had. Respondent said he could not. Respondent was asked what the most  
14 likely reason was for ED in a patient who has had prostate surgery. Respondent testified  
15 it could be nerves, but he could not identify them for the Board. Respondent was asked if  
16 it would have been important to talk to RSC's urologist to see if the nerves, the cavernous  
17 nerves, were damaged and to see what the expectations were or why RSC failed with the  
18 previous Viagra treatment. Respondent testified it may have. Respondent noted most of  
19 the men he has treated have been on very short course Viagra treatment and most  
20 people who have treated ED would say that is not adequate treatment.

21 9. Respondent was asked if he believed RSC was misled by the  
22 advertisement in that he thought he was getting into the Cialis program for no cost and  
23 ended up being charged \$99.00 for an examination and did not get Cialis. Respondent  
24 testified RSC obviously felt misled and if he had known RSC's expectations at the time,  
25 he would not have charged him. Respondent noted he did not know about RSC's

1 dissatisfaction until RSC filed the complaint. The Board noted it was trying to figure out  
2 Respondent's role as a physician. RSC had a urologist, had prostatic cancer, had a  
3 primary care physician and yet Respondent did not feel he needed to talk to either of  
4 them. Respondent was asked what he was going to add to RSC's medical care – how  
5 could RSC benefit by seeing Respondent. Respondent testified he did not remember.

6 10. Respondent was asked if he had particular forms or information he gave out  
7 in advance of seeing patients so he would know which patients were coming to talk about  
8 a study versus maybe coming in for treatment separate from a study. Respondent  
9 testified he normally did, but in RSC's case he just did not recall. Respondent was asked  
10 if RSC would have been charged \$99.00 if he had qualified for the study. Respondent  
11 said RSC would not have, should not have. Respondent was asked if he saw a problem  
12 with the structure of his visits. Respondent testified RSC's circumstance was very  
13 unusual and this problem had not come up before. Respondent noted if RSC had said  
14 anything to him, he would not have charged him. Respondent testified he was not trying  
15 to defraud anybody and, since he has seen thousands of patients, if he was trying to  
16 defraud people the Board would certainly have gotten more complaints.

17 11. Respondent testified he normally would not even see a patient who did not  
18 qualify for the study or he would see the patient and briefly explain he did not qualify and  
19 the patient would leave (unless he wanted to be treated for something else). Respondent  
20 believes RSC wanted to be treated for something else and because of that, he was  
21 treated like a regular patient. Respondent was asked if it made sense that RSC said  
22 Viagra did not work for him, yet Respondent gave him Viagra. Respondent testified he  
23 normally would ask the patient what he meant by Viagra not working for him, but he does  
24 not remember what happened with RSC.  
25

1           12.   Respondent was asked what disqualified RSC from being in his study.  
2   Respondent testified it would depend and, if the facts as related earlier are correct,  
3   maybe by the time RSC presented Respondent was done enrolling for that study.  
4   Respondent testified he would not know what disqualified RSC because he never  
5   evaluated RSC for the study and treated him as a regular patient. Respondent testified  
6   he had no notes or recollection that RSC was ever interested in a study other than the  
7   note Respondent put on RSC's record to put him on the list for future ED studies.  
8   Respondent testified he had a number of studies on-going for other conditions, such as  
9   hypertension, diabetes, osteoarthritis, etc. Respondent testified that when he first saw  
10   the complaint he did not understand it. Respondent noted in the past when he has had a  
11   problem with a patient like this, they have just talked it out and if the patient was misled,  
12   Respondent would not charge the patient for the visit.

13           13.   Respondent charged RSC a fee for services not rendered when he charged  
14   him under CPT code 99204, but did not take a comprehensive history, perform a  
15   comprehensive physical examination or exercise medical decision making of moderate  
16   complexity.

17           14.   Respondent's advertisement that led RSC to present to him was deceptive  
18   or misleading.

#### 19                           CONCLUSIONS OF LAW

20           1.    The Arizona Medical Board possesses jurisdiction over the subject matter  
21   hereof and over Respondent.

22           2.    The Board has received substantial evidence supporting the Findings of  
23   Fact described above and said findings constitute unprofessional conduct or other  
24   grounds for the Board to take disciplinary action.  
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3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(27)(c)("[f]alse, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative;" ) and 32-1401(27)(u)("[c]harging a fee for services not rendered . . . .")

## ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that

1. Respondent is issued a Letter of Reprimand for deceptive or misleading advertising and for charging a fee for services not rendered.

2. Respondent is placed on probation for two years with the following terms and conditions:

a. Respondent shall obtain 20 hours of Board Staff pre-approved Category I Continuing Medical Education ("CME") in ethics and provide Board Staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for biennial renewal of medical license. The probation will terminate when Respondent supplies proof of course completion satisfactory to Board Staff.

3. In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona, will not apply to the reduction of the probationary period.

1                                    **RIGHT TO PETITION FOR REHEARING OR REVIEW**

2            Respondent is hereby notified that he has the right to petition for a rehearing or  
3 review. The petition for rehearing or review must be filed with the Board's Executive  
4 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The  
5 petition for rehearing or review must set forth legally sufficient reasons for granting a  
6 rehearing or review. A.A.C. R4-16-102. Service of this order is effective five (5) days  
7 after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not  
8 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to  
9 Respondent.

10           Respondent is further notified that the filing of a motion for rehearing or review is  
11 required to preserve any rights of appeal to the Superior Court.

12           DATED this 12 day of August, 2005.




THE ARIZONA MEDICAL BOARD

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By   
TIMOTHY C. MILLER, J.D.  
Executive Director

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ORIGINAL of the foregoing filed this  
12<sup>th</sup> day of August, 2005 with:

Arizona Medical Board  
9545 East Doubletree Ranch Road  
Scottsdale, Arizona 85258

Executed copy of the foregoing  
mailed by First Class Mail this  
12<sup>th</sup> day of August, 2005, to:

John W. McGettigan, Jr., M.D.  
Address of Record

